

LOCAL RULES
OF THE
UNITED STATES BANKRUPTCY APPELLATE PANEL
FOR THE EIGHTH CIRCUIT

Revised February 8, 2006

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LOCAL RULE 8001A. ELECTION TO HAVE APPEAL HEARD BY THE DISTRICT COURT; APPLICABLE RULES; DISMISSAL

(a) Election to Have Appeal Heard by the District Court. Appellant's separate election to have the appeal heard by the district court shall be filed with the clerk of the bankruptcy court. Any other party's election shall be filed with the clerk of the bankruptcy appellate panel. The filing of any paper by an appellee with the bankruptcy appellate panel, except a Notice of Appearance, waives the time remaining in the thirty-day period to elect to have the appeal heard in district court. Until a timely election to have the appeal heard by the district court is filed, all motions and other papers shall be filed with the clerk.

(1) Timeliness of Election; Clerk's Duties. The election to have the appeal heard by the district court shall substantially follow the form established by Appendix A. If any party makes a timely election to have the appeal heard by the district court, the clerk shall promptly notify the parties and the clerk of the bankruptcy court and shall transmit all papers which have previously been filed with the clerk, as well as a certified copy of the docket, to the clerk of the bankruptcy court who shall process the appeal in accordance with Part VIII of the Federal Rules of Bankruptcy Procedure.

(2) Determination of Timeliness of Election. If any party questions the timeliness of the election, the clerk shall refer the question to a panel.

(3) Cross Appeals. If a party makes a timely election to go to the district court on an appeal, then cross-appeals shall also go to the district court. Likewise, if neither party makes an election to go to the district court on an appeal, they may not elect to go to the district court on a cross-appeal.

(b) Applicable Rules. These Rules are promulgated under the authority of Fed.R.Bankr.P. 8018 and the Judicial Council of the Eighth Circuit's resolution dated April 10, 1996, entitled "Order of the Judicial Council Establishing a Bankruptcy Appellate Panel."

(1) Citation. These Rules will be known as the Local Rules of the United States Bankruptcy Appellate Panel for the Eighth Circuit and cited as: L.R. BAP 8th Cir.

(2) Effective Date. These Rules are effective January 1, 1997, as amended June 1, 2001.

(3) Federal Rules of Bankruptcy Procedure 8001 et seq. Part VIII of the Federal Rules of Bankruptcy Procedure and Official Forms (Rule 8001) et seq. apply to proceedings in this court unless suspended as allowed by Fed.R.Bankr.P. 8019.

(4) Other Applicable Rules. When Part VIII of the Federal Rules of Bankruptcy Procedure and these Rules are silent as to a particular matter of practice, the court may order application of the Federal Rules of Appellate Procedure or the Local Rules of the United States Court of Appeals for the Eighth Circuit.

(c) Dismissal. If an appellant fails to comply with Part VIII of the Federal Rules of Bankruptcy Procedure or these Rules, the clerk shall notify the appellant that the appeal will be dismissed for want of prosecution unless appellant remedies the default within ten (10) days after the clerk issues the notice. If an appellant fails to comply within the ten (10) day period, the clerk shall enter an order dismissing the appeal for want of prosecution and shall issue a certified copy of the order as the mandate to the clerk of the bankruptcy court from which the appeal originated. After the appeal has been dismissed under this Rule, there is no remedy for default except by order of the court. The dismissal of an appeal shall not limit the court's authority to take disciplinary action against defaulting parties or counsel in appropriate cases.

LOCAL RULE 8001B. CERTIFICATION TO COURT OF APPEALS

(a) Timely Appeal Required. A certification of a judgment, order, or decree of a bankruptcy court to a court of appeals under 28 U.S.C. § 158(d)(2) shall not be treated as a certification entered on the docket within the meaning of § 1233(b)(4)(A) of Public Law No. 109-8 until a timely appeal has been taken in the manner required by subdivisions (a) or (b) of this rule and the notice of appeal has become effective under Rule 8002.

(b) Court Where Made. A certification that a circumstance specified in 28 U.S.C. § 158(d)(2)(A)(i)-(iii) exists shall be filed in the court in which a matter is pending for purposes of 28 U.S.C. § 158(d)(2) and this rule. A matter is pending in a bankruptcy court until the docketing of the appeal of a final judgment, order, or decree in accordance with Rule 8007(b) or the grant of leave to appeal an interlocutory judgment, order, or decree under 28 U.S.C. § 158(a). A matter is pending in a district court or bankruptcy appellate panel after an appeal of an interlocutory judgment, order, or decree has been docketed in accordance with Rule 8007(b) or leave to appeal has been granted under 28 U.S.C. § 158(a).

(1) Certification by Court on Request or Court's Own Initiative.

(A) *Before Docketing or Grant of Leave to Appeal.* Only a bankruptcy court may make a certification on request or on its own initiative while the matter is pending in the bankruptcy court.

(B) *After Docketing or Grant of Leave to Appeal.* Only the district court or bankruptcy appellate panel involved may make a certification on request of the parties or on its own initiative while the matter is pending in the district court or bankruptcy appellate panel.

(2) Certification by All Appellants and Appellees Acting Jointly. A certification by all the appellants and appellees, if any, acting jointly may be made by filing the appropriate Official Form with the clerk of the court in which the matter is pending. The certification may be accompanied by a short statement of the basis for the certification, which may include the information listed in subdivision (f)(3)(C) of this rule.

(3) Request for Certification; Filing; Service; Contents.

(A) A request for certification shall be filed, within the time specified by 28 U.S.C. § 158(d)(2), with the clerk of the court in which the matter is pending.

(B) Notice of the filing of a request for certification shall be served in the manner required for service of a notice of appeal under Rule 8004.

(C) A request for certification shall include the following:

- (i) the facts necessary to understand the question presented;
- (ii) the question itself;
- (iii) the relief sought;
- (iv) the reasons why the appeal should be allowed and is authorized by statute or rule, including why a circumstance specified in 28 U.S.C. §158(d)(2)(A)(i)-(iii) exists; and
- (v) an attached copy of the judgment, order, or decree complained of and any related opinion or memorandum.

(D) A party may file a response to a request for certification or a cross-request within 10 days after the notice of the request is served, or another time fixed by the court.

(E) The request, cross request, and any response shall not be governed by Rule 9014 and shall be submitted without oral argument unless the court otherwise directs.

(F) A certification of an appeal under 28 U.S.C. § 158(d)(2) shall be made in a separate document served on the parties.

(4) Certification on Court's Own Initiative.

(A) A certification of an appeal on the court's own initiative under 28 U.S.C. § 158(d)(2) shall be made in a separate document served on the parties in the manner required for service of a notice of appeal under Rule 8004. The certification shall be accompanied by an opinion or memorandum that contains the information required by subdivision (f)(3)(C)(i)-(iv) of this rule.

(B) A party may file a supplementary short statement of the basis for certification within 10 days after the certification.

LOCAL RULE 8003A. LEAVE TO APPEAL

If leave to appeal is required by 28 U.S.C. § 158(a) and has not earlier been granted, the authorization of a direct appeal by a court of appeals under 28 U.S.C. § 158(d)(2) shall be deemed to satisfy the requirement for leave to appeal.

LOCAL RULE 8006A. DESIGNATION OF THE RECORD

Unless otherwise directed by the panel, the parties may dispense with filing a designation of record and statement of issues.

**LOCAL RULE 8007A. COMPLETION OF THE TRANSCRIPT AND
TRANSMISSION OF RECORD**

(a) Transmission of the Preliminary Record. Unless the appellant has filed an election to have the appeal heard by the district court, promptly upon the filing of a notice of appeal, the clerk of the bankruptcy court shall transmit to the clerk of the bankruptcy appellate panel one certified copy of the following documents:

(1) the bankruptcy court docket sheets in the case or proceeding;

(2) the notice of appeal;

(3) any motion for extension of time to file the notice of appeal and any dispositive order on the motion;

(4) the bankruptcy court's final judgment or order from which the appeal is taken, together with any pertinent written findings, conclusions or opinions of the court; and

(5) all motions to amend or make additional findings of fact, to alter or amend the judgment, for a new trial, or for relief under Fed.R.Bankr.P. 9024, [see, Fed.R.Bankr.P. 8002(b)], together with any order disposing of the motions.

(b) Supplemental Record. The clerk of the bankruptcy court shall supplement this preliminary record by transmitting to the clerk of the bankruptcy appellate panel one copy of any subsequently filed post-judgment motions together with one copy of the dispositive order and the related docket entries.

(c) Transmission of the Record. Transmission of the preliminary record and any supplemental record to the clerk of the bankruptcy appellate panel constitutes transmission of the record on appeal for the purposes of Fed.R.Bankr.P. 8007(b).

(d) Docketing the Appeal. Upon receipt of the preliminary record, the clerk of the bankruptcy appellate panel shall docket the appeal and establish a schedule for the designation of the record, the completion of the transcript and the filing of briefs. For the purpose of determining where to file a certification under Local Rule 8001B, and for no other purpose, the appeal is deemed to be docketed 30 days after the date the notice of appeal was filed. The clerk shall notify all parties to the appeal and the clerk of the bankruptcy court that the matter has been docketed and a briefing schedule established. At the time of the docketing the clerk shall assign the case a unique, permanent bankruptcy appellate panel case number.

(e) Duty of the court reporter to prepare and file the transcript.

The acknowledgment of a transcript request prepared by the reporter, electronic court recording operator or transcribing service shall be sent to both the clerk of the bankruptcy court and the clerk of the bankruptcy appellate panel. The reporter, operator, or transcriber shall notify the clerk of the bankruptcy appellate panel when the transcript is filed. A reporter's or transcriber's motion for an extension of time to file the transcript shall be filed with the clerk of the bankruptcy panel.

(f) Duty of the bankruptcy court clerk to transmit the transcript.

Upon the filing of the transcript, the clerk of the bankruptcy court shall transmit the transcript to the clerk of the bankruptcy appellate panel.

LOCAL RULE 8008A. ELECTRONIC FILING AND NOTICING

(a) Electronic Filing. In cases or classes of cases as the clerk may select, the clerk is authorized to allow or to require any moving party to file a required document electronically. The electronic image of the document will constitute the original document for all court purposes. Filing is complete when the document is received in the clerk's database.

To each document filed electronically, the filer must add a certificate verifying that the original was signed by the attorney or party shown as the filer. The original signed document must be maintained by the filer for a period not less than the maximum allowable time to complete the appellate process. Upon request, the original document must be provided to other parties or to the court.

The clerk may allow a clerk of the bankruptcy court to transmit the notice of appeal and other required docketing documents electronically. Receipt of these documents is complete for filing purposes when they are received in the clerk's database.

(b) Electronic Noticing. In cases or classes of cases as the clerk may select, the clerk is authorized to serve all papers on counsel of record electronically. Counsel who agree to accept electronic notice must agree that the electronic notice will be the only notice provided by the clerk.

LOCAL RULE 8009A. APPENDIX

(a) Requirements. Transmission of the preliminary record pursuant to L.R.BAP 8th Cir. 8007A does not relieve counsel of the obligation to prepare a complete appendix as set forth in Fed.R.Bankr.P. 8009. In addition to the requirements of Fed.R.Bankr.P. 8009, the appendix shall include:

(1) Certification of Interested Parties. A certification of interested parties shall include a list of persons, associations of persons, firms, partnerships and corporations which may have an interest in the outcome of the case in substantially the following form:

NUMBER AND TITLE OF THE APPEAL
Certification Required By L.R.BAP 8th Cir.
8009A(a)(1): The undersigned, counsel of
record for _____ certifies that
the following listed party (or parties) has
(have) an interest in the outcome of this
appeal. These representations are made to
enable the judges of the panel to evaluate
possible disqualification or recusal.

(Here list the names of all such parties
and identify their connection and interest
with the appeal.)

(Signature)_____

(2) Certification of Related Cases. A Certification of Related Cases which shall include a statement of all known related cases before a United States Court of Appeals, a United States District Court, a United States Bankruptcy Court, or a United States Bankruptcy Appellate Panel. A related case is one which involves substantially the same litigants, or one which involves substantially the same factual pattern or legal issue.

(b) Form and Number. The appendix shall be bound separately from the brief and shall contain an index of its contents. Three copies shall be filed; one copy shall be served on counsel for each party separately represented.

Rule 8010A. BRIEFS

(a) Number of Briefs. An original and five copies of each brief shall be filed with the clerk. For all briefs prepared on a computer, the filing party must also provide the clerk with a 3 ½ inch computer diskette containing the full text of the brief in one document. The label on the diskette must include the case name and the docket number. The filing party must file a certificate stating that the diskette has been scanned for viruses and that it is virus-free. The certificate must also include the name and version of the word processing software used to prepare the brief, as well as the number of words contained in the body of the brief.

(b) Length of Briefs. Principal briefs shall not exceed 6500 words and reply briefs shall not exceed 3900, exclusive of pages containing the table of contents, tables of citations, statement of the basis of appellate jurisdiction, statement of the issues and standard of review.

(c) Service of Briefs. One copy of each brief shall be served on counsel for each party separately represented.

LOCAL RULE 8011A. MOTIONS

(a) Orders the Clerk May Grant. The clerk has discretion to enter orders on behalf of the court in procedural matters, including, but not limited to:

- (1) applications for leave to file over length briefs;
- (2) extensions of time to file briefs, transcripts and appendices;
- (3) extensions of time to designate the record;
- (4) corrections to briefs, pleadings, or the record;
- (5) supplementation of the record on appeal;
- (6) incorporation of the record from prior appeals;
- (7) consolidation of appeals;
- (8) substitution of parties;
- (9) motions to appear as amicus curiae;
- (10) requests by amicus curiae counsel to participate in oral argument by sharing time with other counsel;
- (11) advancement or continuance of cases;
- (12) withdrawal of counsel;
- (13) extensions of time to file motions for rehearing, bills of costs and motions for attorneys' fees;
- (14) taxation of costs.

If any party seeks reconsideration of an order entered under this section, the clerk shall submit the matter for ruling by a three-judge panel.

(b) Motions to Dismiss. A party may move to dismiss an appeal for failure to comply with the Federal Rules of Bankruptcy Procedure or these Local Rules or any other Rule made applicable to the appeal.

(c) Motion for Extension of Time for Filing Brief. A motion for extension of time for filing a brief shall:

(1) be made within the time limit established by the court's briefing schedule for the filing of such brief and shall be accompanied by proof of service;

(2) be supported by a declaration stating the time when the brief is due; how many extensions of time, if any, have been granted and when the brief was first due; and whether any previous requests for extensions of time have been denied or denied in part;

(3) briefly recite the reasons why such an extension is necessary and the amount of time requested. Any motion for an extension of time to file a brief on the ground that the transcript is unavailable must affirmatively show that the transcript was timely ordered and paid for or must state why the transcript was not so ordered.

Pursuant to L.R. BAP 8th Cir. 8011A(a)(2), the clerk is authorized to rule on all motions for extension of time to file a brief. Motions for extension of time will be processed promptly and without awaiting responses from opposing counsel. Any objection received after an order has been entered on the motion may be treated as a request for reconsideration.

(d) Emergency Motions. If a movant certifies that to avoid immediate irreparable harm, relief is needed on an emergency basis, the motion shall be governed by Fed.R.Bankr.P. 8011(d) and the following requirements:

(1) Any motion under this Rule shall have a cover page bearing the legend "Emergency Motion" and the caption of the case.

(2) A certificate of counsel for the movant shall follow the cover page and shall contain:

(A) Facts showing the existence and nature of the claimed emergency;

(B) The telephone numbers and office addresses of moving and opposing counsel and parties who are not represented by counsel;

- (C) When and how the other parties were notified and whether they have been served; or if not notified and served, why that was not done;
- (D) If the relief sought in the motion was available in the bankruptcy court, a statement as to whether all grounds advanced in support of the motion brought before the panel were submitted to the bankruptcy court, and, if not, the reasons why.

(3) An appendix to the Emergency Motion shall be served and filed with the motions and shall include the following:

- (A) A copy of the Notice of Appeal (if applicable);
- (B) A copy of the judgment, order, or decree from which the appeal is taken;
- (C) A copy of the bankruptcy court's order denying the movant emergency relief.

(4) Emergency motions and responses shall be filed with the clerk in St. Louis, Missouri. The movant must use every practicable effort to notify and serve opposing counsel, using the quickest method available. The burden is on the movant to provide to the clerk and to opposing counsel copies of all documents relevant to the motion

(e) Reconsideration of Orders. Any party adversely affected by an order entered under the provisions of this Rule may file a motion to reconsider, vacate or modify the order within 10 days after its entry. The motion shall be referred to a three-judge panel.

LOCAL RULE 8014A. COSTS

(a) Taxation of Reproduction Costs. Unless a party was directed to file a greater number of copies, a party entitled to recover costs may recover the cost of preparing five copies of the brief, plus two copies for each party separately represented. A party entitled to recover costs may recover the cost of preparing three copies of the appendix, plus one copy for each party separately represented.

(b) Allowed Costs. The clerk shall tax reproduction costs, regardless of reproduction method, at the following rates:

Reproduction per page per copy	\$.15
Binding if required per brief, separate addendum or appendix	\$5.00
Cover per brief, separate addendum or appendix	\$2.00
Sales tax (if any)	at the applicable rate

The clerk shall not allow taxation of other costs associated with the preparation of the brief or appendix. Parties cannot recover the costs of overnight or special delivery services.

(c) Time for Filing. The prevailing party must file a bill of costs within 10 days after entry of judgment. Untimely bills will be denied unless a motion showing good cause is filed with the bill. The losing party must file any objections to the bill of costs within 8 days after being served. The clerk may, upon a showing of good cause, grant a party an additional 8 days for filing either the bill of costs or the objections.

(d) Support for Bill of Costs. The bill of costs must be itemized. Any receipts must be attached as exhibits to the bill of costs.

LOCAL RULE 8015A. MOTION FOR REHEARING

(a) Time for Filing. Unless the time is shortened or extended by order of the court, a motion for rehearing must be filed within 10 days after entry of judgment.

(b) Responses. Unless the court requests, no response to a motion for rehearing shall be filed. Ordinarily, a rehearing will not be granted in the absence of such a request for response.

(c) Court Action if Granted. If a motion for rehearing is granted, the court may make a final disposition without re-argument, may restore the case to the calendar for re-argument or re-submission, or may issue any other appropriate order.

(d) Form of Motion and Length. Unless an order granting permission to file an over-length motion for rehearing is granted, the motion is limited to 15 pages. The motion may not incorporate briefs filed in this or another court.

(e) Extensions of Time. Upon a showing of good cause, the clerk may grant a party an additional 10 days to file either a motion for rehearing or a required response. The motion for the extension of time must be filed within the time allowed for the filing of the motion for rehearing or response. Motions for extension of time received in the clerk's office after the time for filing a motion for rehearing or response has expired may be denied as untimely.

**LOCAL RULE 8016A. DUTIES OF THE CLERK OF THE BANKRUPTCY
APPELLATE PANEL**

(a) Clerk of the Bankruptcy Appellate Panel.

(1) Designation Of Clerk. The Clerk of the United States Court of Appeals for the Eighth Circuit shall serve as the Clerk of the United States Bankruptcy Appellate Panel for the Eighth Circuit. Unless it is inconsistent with the context, the word clerk in these rules means the Clerk of the United States Bankruptcy Appellate Panel for the Eighth Circuit.

(2) Communications to the Bankruptcy Appellate Panel. All communications to the Bankruptcy Appellate Panel shall be addressed to:

Clerk of the Court
United States Bankruptcy Appellate Panel
for the Eighth Circuit
Thomas F. Eagleton Court House
111 S. Tenth Street, 24th Floor
St. Louis, MO 63102

(b) Issuance of Mandate. The clerk shall issue the mandate of the court seven days after the expiration of the time for filing a motion for rehearing. A certified copy of the judgment and a copy of the opinion of the court, if any, shall constitute the mandate. The mandate is effective when issued.

(c) Stay of Mandate. Following are conditions upon which the court's mandate may be stayed:

(1) On Motion for Rehearing. The timely filing of a motion for rehearing will stay the mandate until disposition of the motion unless otherwise ordered by the court. If the motion is denied, the mandate shall issue seven days after entry of the order denying the motion.

(2) Pending Appeal. A party who files a motion requesting a stay of mandate pending appeal to the United States Court of Appeals for the Eighth Circuit must show that the appeal presents a substantial question and that there is good cause for a stay. The stay cannot exceed 30 days unless the period is extended for cause shown or unless a notice of appeal is filed during the period of the stay, in which case the stay will continue until final disposition by the Court of Appeals. The clerk shall issue the mandate immediately when a copy of an order of the Court of Appeals is entered disposing of the appeal. The court may require a bond or other security as a condition to the grant or continuance of a stay of the mandate.

LOCAL RULE 8018A. ADMITTING AND DISCIPLINING ATTORNEYS

(a) Admission. Any attorney admitted to practice before the Court of Appeals for the Eighth Circuit, and in good standing before that court, may practice before the United States Bankruptcy Appellate Panel for the Eighth Circuit. No separate admission fee shall be required. An attorney who is not admitted may file a written pleading but may not appear to present oral argument.

(b) Discipline. The court may take any appropriate disciplinary action against an attorney who practices before it for conduct unbecoming a member of the bar or for failure to comply with these Rules or any court Rule. Counsel will be afforded reasonable notice, an opportunity to show cause to the contrary, and, if requested, a hearing. The Bankruptcy Appellate Panel may direct the clerk to refer a disciplinary matter to the United States Court of Appeals for the Eighth Circuit.

UNITED STATES BANKRUPTCY APPELLATE PANEL
FOR THE EIGHTH CIRCUIT

In re:)
)
DEBTOR,) Case No.
)
Debtor.) Chapter

APPELLEE'S ELECTION THAT APPEAL BE HEARD BY THE
UNITED STATES DISTRICT COURT

Appellee, _____, hereby elects, pursuant
to 28 U.S.C. § 158 (c)(1)(B) and L.R. BAP 8th Cir. 8001A(a)(1), to
have this appeal heard by the United States District Court for the
_____ District of _____. The notice
of appeal was served on the undersigned on
_____.

Attorney for Appellee
Address
City, State, Zip

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF _____

In re:)
)
DEBTOR,) Case No
)
Debtor.) Chapter

APPELLANT'S ELECTION THAT APPEAL BE HEARD BY THE
UNITED STATES DISTRICT COURT

Appellant, _____, hereby elects,
pursuant to 28 U.S.C. §158(c)(1)(A), to have this appeal heard by the
United States District Court for the _____ District of
_____.

Attorney for Appellant
Address
City, State, Zip